Canada Commission and committee

REPORT OF THE COMMISSION OF INQUIRY

Inquiry

CONCERNING PROPOSED CHANGES IN THE
CANADA LABOUR CODE, PART III,
TO PROVIDE FOR A MODIFIED WORK WEEK
OF LESS THAN FIVE DAYS

Report; PHASE II

AMENDMENT TO THE CODE

Pursuant to Section 62(a) of the
Canada Labour Code

R.S. c.L-1, Part III
as amended by
1970-71, c.50

Harris S. Johnstone
Commissioner

December 1972

CANADA DEPARTMENT OF LABOUR

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C A N A D A D E P A R T M E N T O F L A B O U R

8 December 1972

The Honourable John Munro, P.C., M.P.
Minister of Labour
Ottawa, Canada.

Sir,

On June 22, 1972, pursuant to section 62(1) of the Canada Labour Code (Part III, Labour Standards), the Honourable Martin O'Connell appointed me as a Commission of Inquiry:

(1) to inquire into and report on the requests of five companies for a modification of the provisions of section 29 of the Canada Labour Code for the purpose of rearranging their work week in such a way as to compress the standard 40-hour week into one of fewer than five days, and

(2) to submit my conclusions on the advisability of amending the Canada Labour Code to permit the rearranging of the work week into one of fewer than five days.

Under date of September 27 I submitted my report on Item (1). That report was designated Phase I - Applications from Five Companies.

I beg to submit herewith my report on Item (2), designated Phase II - Amendment to the Code.

This report deals also with certain hours of work arrangements of the Canadian National Railways and Canadian Pacific Limited which the former Minister of Labour referred to me on September 28.

I have the honour to be,

Sir,

Your obedient servant,

H.S. Johnstone

Harris S. Johnstone
Commissioner

ACKNOWLEDGMENTS

The Commission is pleased to record and express appreciation to the following persons:

Miss Kathleen H. Allen, who handled with competence, resourcefulness and discretion the duties of Secretary to the Commission, which included the arranging of hearings, contracts for transcribing the discussions, budgeting, directing research, and answering correspondence. She also dealt with various other matters important to this Inquiry.

Mrs. A.M. Mitchell, who performed with efficiency and good judgment the secretarial work in the office and other related matters.

Mr. G. Van Berkel and Mr. A.J. Roach who, in turn, acted as Counsel to the Commission and provided very useful legal interpretations and guidance.

Mr. Gérard Legault, Labour Standards Branch, who prepared information on practices in specific industries.

Mr. Michel Legault, Labour Standards Branch, who developed a series of statistical tabulations which were completed within a short period of time and were of considerable value to the Inquiry.

Mr. E.W. Walker, Economics and Research Branch, who prepared a very comprehensive digest of available information on the four-day week.

Mr. R.G. Demers, Labour Standards Branch, who prepared a special report covering modified work week discussions

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at the 1972 annual meeting of the Canadian Association of Administrators of Labour Legislation, convened at Halifax in July 1972.

Miss Marjorie Robertson, Library Services, who diligently searched for and provided the Commission with publications and periodicals relating to the modified work week.

Mr. J.K. Wanczycki, International Labour Affairs Branch, who supplied much useful and relevant information concerning certain ILO Conventions and their interpretation and application.

Miss L. Painter, Legislative Research Branch, who made available certain information on labour standards legislation in the provinces.

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APPOINTMENT OF COMMISSION OF INQUIRY

WHEREAS the Minister of Labour has received requests from Defence Construction (1951) Limited, Air Canada, Bell Canada, the St. Lawrence Seaway Authority, and Survair Ltd. to modify the provisions of section 29 of the Canada Labour Code for the purpose of the application of Division I of Part III thereof to certain classes of their employees who are desirous of having their workweek rearranged in such a way as to compress the standard 40-hour workweek into one of fewer than five days, and

WHEREAS the Minister deems it advisable that an inquiry be made into and concerning the employment of employees of these industrial establishments who are liable to be affected by any such modification,

NOW, THEREFORE, the Minister of Labour, pursuant to subsection 62(1) of the Canada Labour Code, hereby appoints Harris S. Johnstone, Esq., of the City of Ottawa, in the Province of Ontario, as a Commission to hold and cause an inquiry to be made:

(1) into and concerning employment practices in the said industrial establishments as they relate to the certain classes of employees listed in attached schedules 1 to 5 inclusive, and to submit its conclusions as to

(a) whether the application of section 29 of the Canada Labour Code without modification would be or is

(i) unduly prejudicial to the interests of employees in the abovementioned classes, or

(ii) seriously detrimental to the operation of the industrial establishments above listed;

(b) whether it is in the best interests of any of the employees in the abovementioned classes

(i) to have their workweek altered in such a way that they will be working fewer than five days in a week, and

(ii) to modify the standard hours of work described in section 29 of the Canada Labour Code for the purposes of the application of Division I of Part III thereof to such employees;

(c) the manner in which the provisions of section 29 should be modified, if it is concluded that the said provisions should be modified;

(d) the conditions or circumstances under which an employee may be required or permitted to work in excess of the standard hours of work as they may be modified; and

(e) any matters incidental to or relating to any of the foregoing matters; and

(2) into and concerning employment in any industrial establishment where the working hours of employees are arranged in such a way that they work fewer than five days in a week, and to submit its conclusions as to the advisability of amending Part III of the Canada Labour Code to the extent necessary to accommodate such arrangements.

The said Commission may engage the services of such technical or expert advisers, clerks, reporters and assistants as it deems necessary or advisable to assist it.

IN WITNESS WHEREOF the Minister of Labour has hereby set his hand and affixed his seal of office at Ottawa this 22nd day of June 1972.

Martin O'Connell
Minister of Labour

INTRODUCTION

On September 27, 1972, this Commission completed a report on Phase I, namely, the application of five companies for a modification of the provisions of section 29 of the Canada Labour Code in order to rearrange the standard 40-hour work week into one of fewer than five days. Accordingly, it was not necessary in this report to include in the Terms of Appointment the schedules of classes of employees of those five companies, and these have been omitted.

This is a report on Phase II of the Inquiry, namely, an inquiry

> "... into and concerning employment in any industrial establishment where the working hours of employees are arranged in such a way that they work fewer than five days in a week, and ... the advisability of amending Part III of the Canada Labour Code to the extent necessary to accommodate such arrangements."

All interested parties who indicated their desire to do so have made representations by written brief, and almost all have attended open hearings to make supplementary oral presentations. The schedule of hearings is contained in Appendix I of this report.

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

At the hearing on October 2, 1972, the Brotherhood was represented by:

Mr. Donald Nicholson	National Vice-President
Mr. Edward H. Finn	Legislative Director

The seven-page brief previously received from the Brotherhood referred to representations that were made, jointly with The St. Lawrence Seaway Authority, to the Commission with respect to Phase I of the Inquiry. At that time the union said that being constrained from altering the work week for Seaway employees to one of less than five days did not constitute circumstances that were unduly prejudicial to the interests of the employees or seriously detrimental to the operation of the Seaway.

The union believes that labour standards legislation should not unduly hamper the employees' freedom to experiment with more flexible and mutually beneficial hours of work patterns. In other words, labour standards legislation should not prevent modified work week arrangements voluntarily agreed upon between employers and unions representing their workers. The union believes that the legislation was not intended to have that inhibiting effect.

The union is conscious of the need for clearly established minimum standards to protect those workers who have no union to bargain for them. For this reason the union does not wish to see the legislation amended in such a way that companies with non-unionized employees might revert to the 10- or 12-hour

day and arbitrarily impose excessively onerous work schedules on their employees.

The union wants the legislation changed to give the Governor in Council authority to grant exemptions from the standard hours provision of the Code for certain employers and classes of their employees. Another criterion should be added. This new provision would apply only to "mutual consent" situations, in places of employment where the workers are represented by a "bona fide trade union". By "bona fide trade union" the Brotherhood said it means a union that is certified by the Canada Labour Relations Board, not one that is recognized only by the employer; most of the latter are company unions and do not always adequately represent the interests of the employees.

The Brotherhood is opposed in principle to any change in the work week that involves working in excess of 8 hours in a day. But, depending on the nature of the work and the wishes of the workers, the union is prepared to experiment with the compressed work week, if only as a transitional stage to the 4-day, 32-hour week. The union has not yet ascertained the wishes of the Seaway employees, but in the meantime requests the removal of any legal obstacle which would make impossible any negotiations on this issue.

The Brotherhood agreed that the 3-day weekend is a powerful lure for many employees. Other possible benefits include relief from not having to battle rush-hour traffic on

the fifth day, saving on transportation costs, and being able to transact personal affairs during workday hours instead of on Saturdays and evenings when stores, offices and recreational facilities are badly overcrowded.

The union admits that the 4/40 or 3/36 work week has disadvantages that in many cases may outweigh the benefits. There is the added strain and fatigue of the longer daily hours. Technology has reduced physical and mental stress on some jobs and has intensified it on others, particularly on assembly-line jobs and other tasks that are characterized by onerous, repetitive, taxing manual labour.

The union agrees that there are many workers who are willing to pay the price of the 10-hour day for the reward of the 4-day week. The preferences of the employees must be taken into consideration as well as the kind of business and the nature of the work. The primary considerations in changing to the longer work day must be the health, welfare and desires of the affected employees.

The Brotherhood reported that surveys among employees of firms that have changed to the 4/40 or 3/36 schedules indicate that most of them are quite happy with the new arrangement: their morale and productivity have improved, and the rate of absenteeism has gone down. But it is still too early to judge the extent to which the 10-hour or 12-hour day will be acceptable to large numbers of workers on a permanent basis. It is questionable whether the increased productivity recorded by

most firms on the modified work week will be permanent. When the novelty wears off, productivity may drop to its former level.

It is the union's opinion that most industrial accidents are due to mental or physical strain, which becomes greater in the later hours of the working day. The longer the hours worked, the higher the accident rate will be.

In the discussion at the hearing, the Commission pointed out that in several instances at these hearings the non-unionized employees initiated the request for the modified work week. Does the Brotherhood believe that these workers should be denied the right to experiment on account of their non-unionization?

The Brotherhood representatives agreed they should not be denied that right. These should be some procedure whereby the Department of Labour could make an objective inquiry, perhaps even to the extent of taking a secret ballot of the employees, to determine their wishes. With that kind of a safeguard the Brotherhood would not want to deny the non-unionized employees the right to experiment.

The union suggested that section 32.1 of the Canada Labour Code be amended by adding another basis for making regulations by the Governor in Council. The new regulation should permit variation from the hours of work standards where such variation is agreed to by the collective bargaining process and incorporated into an agreement ratified by a majority of

the affected employees. Section 32.1(2) should be amended to remove the necessity of holding an inquiry into each situation before such a regulation can be enacted.

AIR CANADA and CANADIAN PACIFIC AIR LINES

Air Canada and CP Air in September 1972 jointly submitted a seven-page brief on Phase II of the Inquiry, and attended a hearing on October 5, 1972. The companies were represented by:

Mr. David E. Hewitt	Manager, Labour Relations, CP Air
Mr. W.G. Endicott	Supervisor, Labour Relations, CP Air
Mr. John P.T. Gilmore	Employee Labour Relations Manager, Air Canada

Air Canada and CP Air contend that minimum employment standards should be applied in a manner flexible enough to allow work arrangements to be implemented which differ in detail from the legally required standard in those situations where the employer and the employees believe it to be in their mutual interest to do so.

The compressed or modified work week is being introduced in Canada and the United States at an accelerating rate ever since the concept began receiving wide publicity about two years ago. In the United States today it is estimated that the modified work week is being introduced at the rate of two a day. In Canada, Imperial Oil has about 90 per cent of its Canadian staff working on some form of modified work week. A management consultant survey in September 1971 found only 17 companies in Canada which had adopted the compressed work week. A recent survey by the same firm shows that more than 200 Canadian companies have adopted some form of modified work week.

The usual advantages for the employees are reduced transportation and daily expense costs and longer continuous blocks of leisure time on the weekends.

The advantages for the employers are better employee morale and reduction in absenteeism, higher use of plant facilities, and reduced costs of start-up and shut-down time.

A possible major disadvantage to the employees is fatigue due to working longer daily hours, and the fear of increased accidents and injuries as a result of fatigue. However, a study made in 1968 by the Pennsylvania Bureau of Research and Statistics, covering 18 manufacturing and 20 non-manufacturing industrial groups, showed that the number of accidents in terms of hourly progression through the work day was highest during the first hour of the day and generally decreased as the day progressed. It would seem that the modified work week could positively influence the accident rate by the reduction in the number of shift start-ups in each work week.

Air Canada and CP Air have utilized the averaging provisions in Regulations 4 and 5, Canada Labour (Standards) Code. Almost one half of the staff of Air Canada is under averaging, and most of this group are under collective agreement. Various schedules of hours have been applied which do not conform to the standard 8 hours a day and 40 hours a week in the Code but do comply with the wider latitude permitted under the averaging regulations.

CP Air has had a collective bargaining relationship for some time with the Transportation-Communication Division, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, Systems Division No. 7 (BRAC).

A supplementary agreement was executed providing for an "experimental flexible work week". The provisions of the main agreement as they relate to hours of work, overtime and general holidays may be waived and such schedules as are developed will be posted by the company. If it is the wish of a three fifths majority of the employees at the location involved to propose an alternative schedule to the company they may do so, provided that their proposed schedule meets work requirements and does not involve an increase in staff or overtime. In negotiating the flexible section of the agreement, the objective was the maintenance of full-time employment and stability of staff in exchange for a flexible scheduling of hours of work. The flexibility allowed under these provisions will also be used to reduce and, preferably, eliminate all part-time help. CP Air has a modified work week in effect under the BRAC agreement and at least eight or nine different arrangements of hours across Canada now, under the averaging provisions of the Code.

CP Air has taken the position, in negotiating hours of work schedules with their employees, that if the work can be done in fewer total weekly hours by extending the daily

hours, then it is prepared to continue paying the same weekly rate. If an employee on a five-day week of 37½ hours or 40 hours can perform the same work in three days of 12 hours each, then the company is prepared to accept that and continue the weekly payment for 37½ or 40 hours, as the case may be.

CP Air hopes to avoid the situation where the implementation of this supplementary agreement is frustrated by a legislative standard which has not kept abreast of changes in the working conditions negotiated by collective bargaining.

Some employees of both companies are on a nine-day cycle of six days work followed by three days off, and the cycle is then repeated. Previous to the adoption of the nine-day cycle, junior employees might always have their days off in the middle of the week. When all employees are on the nine day cycle, all have an equal number of weekends on Saturday and Sunday by the rotation of the cycle. This nine-day cycle is quite a common shift arrangement in the airline industry where service must be provided continuously every day in the year.

Under the provisions of the collective agreement between Air Canada and the Canadian Airline Employees Association the employees work 9 hours a day for six days and then have three days off. By agreement with the Machinists union some Air Canada employees work six 8-hour days and have three days off. In both cases the scheduled hours are at straight time. Overtime at time and one half is paid for work beyond the scheduled hours. The Air Canada agreement with the

International Association of Machinists and Aerospace Workers permits the nine-day cycle when the employees request it. The machinists of CP Air have different types of work weeks under averaging.

These various hours arrangements are approved by the employees and enable the companies to maintain continuous service to the public. The work cycles are legally possible under the averaging provisions of the regulations. Both companies fear that approval of the averaging provisions may be withdrawn on the grounds that many of these employees do not have the irregularity of hours required by the provisions of section 29(2) of the Code and Regulations 4 and 5. The officials frankly state that the situation will be chaotic and there will be a great amount of employee unrest, as well as disorganization of the airlines' activities, if they are required to revert to the rigid pattern of 8 and 40 standard hours and 48 per week maximum hours. The employees are quite satisfied with the present arrangement, but certain groups now on the regular five-day week are considering a rearrangement of hours that would permit them to have three-day and four-day breaks each week.

The companies propose that the requirements which permit entry into the averaging provisions be enlarged by the following regulation:

> "Where an employee is a member of a group of employees who have agreed, either through their bargaining agent or by majority decision where no bargaining agent exists, that the working hours of the employee may be arranged in a manner other than 8 per day and 40 per week, such arrangement will be considered as coming within the hours of work averaging provisions of section 29 of the Canada Labour Code."

It is the opinion of the two companies that this proposed regulation would permit the introduction of the modified work week for those employees not entitled to have their hours come within the averaging provisions of the Code. The companies are seeking only to protect the flexibility they have always exercised in reaching agreement with their employees on work schedules.

GENERAL AVIATION SERVICES LTD.

This company operates at four international airports: Montreal, Ottawa, Toronto and Winnipeg. At Winnipeg it provides ground services for three scheduled airlines, namely, CP Air, Transair and Northwest Airlines, and most charter flights and diversionary landings. Services include ramp and passenger handling, loading and unloading baggage, cleaning the interior of the aircraft, handling all cargo, and technical services.

At the hearing on October 5, 1972, General Aviation Services was represented by Mr. O.E. Mathieu, Secretary-Treasurer.

In Montreal, the company services fourteen airlines, namely, CP Air, twelve European and one trans-border airline, and also some charter operators.

In Toronto, the company services seven scheduled airlines and some charter operators. It does not operate at Vancouver but hopes to do so some day.

At Winnipeg this employer has had collective bargaining relationships with the International Association of Machinists and Aerospace Workers, Lodge 741. The union proposed that a modified work week of four 10-hour days per week be given a trial, and negotiated an amendment to the collective agreement permitting the longer working day to be paid for at straight time rates. Ordinarily, when the workers are on the

five days of 8 hours each, overtime at time and one half or better is paid after each 8-hour shift when the worker is recalled on days off and on statutory holidays.

The company is required to provide service 365 days each year and, depending on the movements of the aircraft, this service has to be provided up to 24 hours a day.

The employer examined the impact of changing the 8-hour shifts to 10-hour shifts and reached the conclusion that the proposed 10-hour, 4-day week reduces the flexibility of its service operations and also lessens the prospects of acquiring further business. The substitution of the longer work day and shorter work week for the 5-day, 40-hour week would cost the employer an additional $10,000 per annum. The company decided not to enter into this arrangement and, in fact, stated in its brief to the Commission that it formally objects to the implementation of this modified work week.

The company has collective agreements with the Machinists union at the other three locations, but these were not discussed in relation to the modified work week. The agreements are with different lodges of the same union. These other unions do not want to change the present 8-hour, 5-day week.

The Commission informed the company representative that, so far in these hearings, requests for an amendment to the Canada Labour Code were based on the concept that the

availability of the use of the modified work week should be on a joint consent basis; no one had suggested that the 4-day, 10-hour week be made mandatory across the area of federal jurisdiction. The company was asked whether it would have any objection to an amendment to the Code to permit other companies and employee groups to try out the modified work week if they wished. The reply was that they had no objection to that kind of amendment; their fear was that the new schedule would in some way be made mandatory.

The company representative also told the Commission that Lodge 741 of the Machinists union at Winnipeg is still interested in discussing the application of a modified work week. Negotiations are under way for new contracts at Montreal, Toronto and Winnipeg, and the subject of a modified work week will not be discussed until after these negotiations are finished, although it is possible that the matter will be brought up during the negotiations.

In Winnipeg the company has thirty-six hourly rated employees and six salaried employees. The hourly rated are: thirty-one aircraft servicemen, four aircraft technicians, and one automotive equipment mechanic.

CANADIAN LABOUR CONGRESS

The Canadian Labour Congress sent a 17-page brief to the Commission on September 26, and at the hearing on October 6, 1972, was represented by Mr. Ronald W. Lang, Director, Legislation Department.

The content of the brief was reviewed and discussed. It stated that the Canadian Labour Congress is the authoritative voice of organized labour in Canada which, at the present time, consists of approximately two million trade unionists. The CLC is charged with the collective responsibility of speaking for its affiliates at the federal level and on federal matters. It has been only through the vigilance of the Congress and, before it, the Canadian Congress of Labour and the Trades and Labour Congress, that the present labour standards were enacted into legislation. This submission by the CLC is one more effort in the long fight to prevent minimum legal labour standards from being eroded, and to strengthen them.

Throughout the brief the CLC referred to the "shorter" work week as being one of fewer hours per day and per week than at present, and the "compressed" work week as being a working arrangement of more hours per day with fewer days in the week. In May 1972 the Canadian Labour Congress Convention adopted the following resolution, indicating organized labour's attitude with respect to the shorter work week:

> "BE IT RESOLVED that this convention urge all Canadian wage earners to resist pressures to accept changes in hours of work such as the four day forty hour work week

which restores the ten hour day and constitutes a serious danger to the eight hours or less per day already won by labour; and

"BE IT FURTHER RESOLVED that the Canadian Labour Congress mount a campaign to urge all its affiliated organizations to press vigorously for a work week comprising 32 hours maximum with emphasis on a week of four days with eight hours or less per day, without loss of take home pay."

The brief referred to the claim being made more and more frequently that the labour movement is becoming reactionary on the issue of the 8-hour day. Organized labour has always been willing to negotiate on the number of hours worked, either by the day or the week, in an effort to reduce them. These claims of a reactionary attitude generally emanate from employers who wish to see the work day extended to 10 or 12 hours. The Congress believes that any move to permit a longer working day, through legislation, is premature. The move to the 4-10 or the 3-12 week is a recent phenomenon, and the associated job stress and fatigue have never been adequately assessed. There is no doubt that the compressed work week received its initial impetus from management. The Congress asserted that management is attempting to cloud the question of higher productivity and greater profits under the cloak of respectability that the compressed work week is really a technique of management to provide greater leisure for working people. It was never intended that the Labour (Standards) Code should be a vehicle through which corporations are aided in their search for greater monetary rewards.

The CLC believes that the unorganized sector of working people relies heavily upon legislation to set minimum standards on employment relationships. Removing or reducing further minimum standards by amending the Code to allow for a compressed work week would be doing a grave injustice to thousands of Canadian people. The CLC strongly urged that there should be no extension of the 8-hour day or 40-hour week. If any change is made it should be toward the 8-hour day and the 32-hour week.

Over the years the CLC has pressed for a reduction of the day to 8 hours in the realization that longer periods spent on the job are injurious to the health and safety of the great majority of working people. The Congress is aware that a number of professional people in various occupations do spend more than 8 hours a day at their work, but challenges any move that will make the application of the compressed work week general to all working people.

The CLC agrees that technological advancement has eliminated much physical strain from work, but there are many situations in which mental strain and exhaustion have increased. Fatigue is difficult to assess, to measure and, indeed, to recognize. It may be slight or it may be so profound that physical and mental energies are exhausted. The CLC is fearful that such a condition may come about if the Code governing labour standards is relaxed, and the worker subject to this

fatigue cannot but be a careless worker or one who is prone to industrial accidents.

The Congress seriously questions the motives of those individuals and groups that are pressing for the longer working day. This move was initiated largely in the unorganized sector of the community. The search for higher productivity and greater profits is the prime motivating factor in this move to a longer work day. The only barrier that prevents this condition from coming into effect is the Labour (Standards) Code. The Congress urges the Commission to reject any move toward a lengthening of the work day beyond the present 8 hours.

It is the view of the Congress that the compressed work week is not designed to offer employees a choice of fewer hours of work per week; it is merely a rescheduling of the weekly hours to 40 hours in four days, or three days, or some similar variable. It is a juggling of figures to provide more "usable leisure to the working people". The Congress remains sceptical as to the true purpose of the compressed work week and is of the opinion that the true goal is increased profits, regardless of the effect on the employees.

The Congress has no quarrel with an increase in productivity since this produces the nation's wealth, but does question the distribution of the new wealth and is concerned that all people who work for a living will share in it - the organized and the unorganized alike. The Congress is not convinced that this would be the natural outcome of the 4-day week as presently proposed.

The Congress said it has no fears for its affiliates in this regard; but the unorganized work force is prone to manipulation if the labour standards are relaxed, and it is this sector for which the Congress voices its concern. The physical and mental strain of longer daily hours may produce a situation on the 4-40 or 3-36 week that the extra weekend time cannot really be looked upon as leisure but should be regarded as a "recovery period". More leisure time can only be found in longer vacations, earlier retirements, increased sabbaticals, and a shorter work day and work week, in combination.

The CLC takes issue with those who contend that the move to the 4-day, or compressed, work week is merely a strategic move toward the 8-hour day and 32-hour week. Once the move is made away from the norm of 8 hours to some other figure, whether it be 10 or 12, there is no guarantee that this new figure will be reduced at some future time.

The Congress contends that any discussion of the relative merits or demerits of the shorter work week eventually comes up against the issues of unemployment or underemployment and the potential that such reduced daily and weekly hours may have for job creation. Labour's answer to the disappearing job opportunities has been sought in less time spent through working, whether it be in earlier retirements, increased vacations, more general holidays, or shorter work days and work

weeks. The alternative solution of the compressed work week of 4-40, or some variation of it, does not visualize the creation of a single new job, and as a measure to reduce unemployment it is of dubious value.

The Canadian Labour Congress concludes that the compressed work week is a device conceived by employers, particularly in the unorganized sector, to create the illusion of offering more "available or usable leisure" to their employees. In fact, the prime purpose of the compressed work week is not what it has to offer by way of benefits to the working people; rather it is the age-old search for greater profits regardless of the possible ill effects in terms of safety or health such action may have on working men and women.

The Congress admits that it is conceivable that certain groups of employees might not find it an undue strain, mentally or physically, to work an extended day as in the compressed work week. The fatigue factor cannot be measured over a short period but needs to be examined over an extended period of time. The important point to consider is whether an extension of the daily hours is socially desirable; the Congress does not believe that it is. The claims that the compressed work week reduces transportation costs, commuting time and absenteeism may all prove to be premature. The alleged advantage of greater "lumps of leisure" may be equally illusory because the compressed work week will, in all probability, result in less take-home pay by reason of less overtime earnings.

The Congress feels that an undesirable feature is the greater time available for moonlighting. This is a deplorable by-product of the compressed work week and reduced earnings - a situation which should not be encouraged by relaxation of the Code's standards.

The Commission was urged to reject any move to accommodate the compressed work week; the only manner in which the shorter work week can safely come into being is through the maintenance of eight hours or less a day.

At the hearing there was some discussion of the admitted fact that a number of unions in Canada have concluded compressed work week agreements. The Congress representative explained that he would not make the generalization that there are no places where one can work for 10 or 12 hours a day: there are. But the unionized sector is quite capable of determining what those places are. The action taken must be related to the type of duties and the environment in which the employees work. But there remains the problem: how do you protect the worker who is in an unorganized sector of the community?

There was also some discussion of the Congress's assertion that it seriously questions the motives of those individuals and groups that are pressing for the longer working day. The Commission asked: does this questioning of motives extend to the unions that are seeking the modified work week? The answer given by the Congress representative was that if the employees urge their union to negotiate a compressed work

week, then that is what collective bargaining is all about. The unions are better equipped to make sure that any increases in profits are distributed, but this may not occur in the unorganized sector. If the Code is going to be altered to provide for the option of the modified work week, then the organized sector can take care of itself, but there is a danger for the non-unionized workers because they are not organized.

The CLC recognizes that there must be flexibility in the Labour Code, and is not arguing against flexibility, but it is concerned about the maintenance of minimum standards. In considering additional flexibility, it is a question of weighing the benefits and the dangers. The Congress simply wishes to point out what those dangers are. Any plan for a compressed work week could not operate without mutual consent.

The Congress asserted that it is being consistent in arguing against an increase in the number of hours per day, simply from the standpoint of questions of fatigue and health. Fatigue affects some people more severely than others: it is difficult to measure, sometimes hard to recognize.

At the hearing there was some discussion of a union agreement in the airline industry, referred to at another hearing, that provides for a 9-day cycle, 6 days on and 3 off. In accordance with the official policy, the Congress would not approve of this. It will not approve of any extension of the 8-hour day. The affiliates themselves have determined Congress policy in this matter. The Congress target is the 8- and 32-hour

week with no extension of the 8-hour day. Any change in that policy will have to come from the affiliates themselves.

The Congress representative agreed that there was no better test of the advantages and disadvantages of the modified work week than an actual trial. In this respect the trials going on in some of the provinces could be studied. In several provinces the relevant competent authorities are waiving the overtime restrictions to permit the new schedules of hours.

The Congress believes that the compressed work week affords the opportunity for increased moonlighting, but cannot say whether it will actually increase. Unions and employers look upon moonlighting as undesirable but doubt that anything can be done about it.

In a supplement submitted after the hearing the Congress agreed that flexible working hours, such as are presently provided for in the Labour Code, are desirable in order to meet the individual worker's needs; for example, the averaging of hours of work for workers with irregular hours. Such flexibility in Code standards must be kept within the present minimum standards of working hours. If additional flexibility is to be built into the Code it should be done without sacrificing the 8-hour day. This can be achieved without placing in jeopardy the present Code standards. It was agreed that the present Code provides for flexibility, but that flexibility is premised upon an 8-hour day. The compressed work week

promotes a different view of working hours, based upon a 10- or 12-hour day. If this innovation becomes a part of the Code it will successfully breach the present philosophy of the Code.

The Congress in its first brief did not deal with the implementation of regulations for a compressed work week. To do so, it said, might be regarded as tantamount to giving consent ex post facto to the extended working day. However, said the Congress, if the issue does arise, the implementation of any such provisions poses some tough questions. What percentage of employees must favour the introduction of a compressed work week schedule: would it be 50, 60 or 70 per cent? What happens to employees who oppose it? Would they be compelled to change their schedules also? What about the individual employee who succumbs to fatigue more quickly than his fellow-workers? Must he seek employment elsewhere? What about the difficulty of determining the bona fide wishes of the employee? Can this be done, at the same time avoiding any punitive or pressure action by the employer? If a group of employees agrees to the compressed work week, how do they go about changing back to the former schedule of hours? Will the regulations force the employer to change the work schedules to comply with the employees' wishes? This might run headlong into the question of management rights.

The Congress asked: how can it be determined whether the 10-hour day is damaging to the health and safety of the working people? There are enough experiments now in existence

either to verify or prove false this claim, without amending the present Code in order to legalize this experiment in the federal jurisdiction. Furthermore, the CLC claimed, it is a well-known fact that most accidents occur during the latter part of a shift when the workers begin to tire.

CANADIAN TELEPHONE EMPLOYEES' ASSOCIATION

At the hearing on October 17, 1972, the Association was represented by:

Mr. T.A. Eidt	Vice-President, Craft
Miss Laurette Poirier	Vice-President, Clerical

The brief previously submitted by the Association was read and discussed. The Association believes that Bell Canada should be free to schedule hours of work to meet operational needs, while still remaining within the intent of the Labour Code. The rigid limits to daily and weekly hours should be removed to permit averaging over a minimum two-week period. The scheduling of those hours should be as agreed upon in negotiations between the union and the company.

The Association referred to the Woods Report on Canadian Industrial Relations, which observed that the objective of limiting the length of the work day and the work week is sound in principle, but the uniform establishment and implementation of regulations forbidding the scheduling of hours above a certain level has worked hardships on a variety of industries because of their structure and the nature of their operations. In most cases where the parties to a collective agreement agree to a certain scheduling of hours, they do so for good reasons. To attempt to change these hours by regulations leaves the Government open to a charge of unwarranted interference in relations between the parties. Such inter-

ference is justified only if the safety, health and well-being of the workers and other citizens are being endangered by the hazards created by long hours of work.

The Association has held federal certifications to represent Bell Canada employees since 1944 and has written annual agreements continuously since that date. The union's major long-term objective is to maintain consecutive days off. Scheduling for a two-week period is absolutely essential to the attainment of this objective. The 48-hour limit of maximum hours has produced problems and widespread dissatisfaction among employees, despite the fact that overtime has been kept to a minimum consistent with the objective of maintaining a permanent work force which would not be subject to periodic layoffs.

The idea of a longer day and shorter work week originated with the union, not the company. Trials of the modified work week have been under way since June 1972. The results are favourable.

The Association said that all employees on the modified work week have experienced some changes in their personal lives and all will be disappointed if they must discontinue this arrangement. The young employees are enthusiastic and already have made plans for winter weekends. Some of the older employees had difficulty in adjusting their living routines and found the days very long, but none wishes to discontinue the trial.

The employees report that there has been a real saving in travel time, even on work days. One group of girls went on the trial schedule of hours without much enthusiasm; all but one are now quite satisfied with the results. The one girl, being unable to make suitable arrangements at home, has been transferred to another group which is on the regular hourly schedule.

One group of married women reported that the modified work week has proved much to their advantage. They do not feel that the day is very much longer because travel time to and from work is less and they are not away from home an appreciably longer time than formerly.

At the latest count, some 260 are on the modified work week. The majority of the 260 are construction workers - splicers and linemen - and are on four 10-hour days. The clerical people are on three 9½-hour days and one 9-hour day; total 37½ hours. The seven UNIVAC computer operators are on three different schedules: 3 x 12 + 3 x 12 + 1 x 8; total seven days, 80 hours in two weeks; 4 x 10 = 40 hours; and 5 x 8 = 40. The employees change from one schedule to another so that 24 hours every day in the year may be covered. All in the computer group are anxious to continue the present arrangement.

About 85 workers are scheduled to go on the modified work week as of December 1 this year.

The selective mutual consent basis is still used when putting workers on the modified work week. For example,

in one group of 35 people, 10 did not want to go on the plan, so it was not adopted. The policy is to obtain close to unanimous consent before the new schedule of hours is introduced. At the present time it is difficult to accommodate all employees who wish to try the modified work week.

An attempt is made to allow employees to opt in or out. This is usually done by a transfer to another department when an employee is dissatisfied with the new hours.

An extensive questionnaire has been circulated by Bell Canada. It covers such matters as: change in home life, effect on the children, recreational and social activities, university extension courses, travel plans, transportation to and from work, fatigue. A second questionnaire will soon be circulated. After the two completed questionnaires have been studied, it may be possible to draw firm conclusions as to the advantages and disadvantages of the modified work week, the effects of fatigue, and the extent of errors and accidents.

Bell Canada employs about 10,000 craftsmen, consisting of 2,000 on construction, 4,000 on installation, and 4,000 on maintenance.

Most of the installers are on a two-week schedule of six 8-hour days followed by four 8-hour days in the second week, a total of 80 hours. A 24-hour coverage by a good many maintenance workers is required. They are on three different schedules: some are on 5-8-40, some are on $6 \times 8 + 4 \times 8 = 80$; and some on $7 \times 8 + 3 \times 8 = 80$ in bi-weekly periods.

There are support groups of vehicle maintainers, building service workers, equipment maintainers, plumbers and carpenters. About 1,500 are in this service group, and many are involved in 24-hour coverage.

About 75 per cent of the 10,000 craftsmen are on averaging; some of them on 52-week averaging. Many of the clerical workers are operating under 13-week averaging. Overtime at time and one half is paid after the scheduled hours, whether they be 8, 10 or 12, and when recalled on days off. This overtime is on a much more favourable basis than the lower standard on overtime permitted by the averaging regulations.

The CTEA realizes that in many cases there is not the necessary irregularity of hours which is a prerequisite of averaging, and they fear that this privilege may be withdrawn. If it is, the situation would be disastrous, since then the employees would be required to go on the Code standards of 8, 40 and 48 hours.

The CTEA agreed that it really needs two plans: one allowing the modified work week, and one permitting averaging over a two-week period for a greater part of the work force.

It is believed that there is not any more moonlighting in this industry than in others. Only a small percentage of those working and living in cities engages in moonlighting. In the smaller centres some people have plots of land which they cultivate: this seems to be more in the nature of recreation than moonlighting.

The CTEA representatives emphasized the general desire of the employees for an increase in leisure time; this is the biggest single attraction of the modified work week.

BELL CANADA

Bell Canada submitted a brief in September 1972 in support of its general belief that Part III of the Canada Labour Code should be amended to accommodate the realities of the modified work week. At a hearing on October 18, the company was represented by:

Mr. L.C. Godden	Assistant Vice-President, Labour Relations
Mr. J.E. Nolan	General Supervisor, Labour Relations
Mr. I.M. Hay	Staff Supervisor, Working Conditions and Contract Analyses

Bell Canada stated that the standards of the Canada Labour Code, Part III, respecting hours of work, were established at a time when the 5-day work week was dominant, if not universal. The situation has changed; there has been a groundswell of interest in more effective leisure hours. The community is seeking better time-sharing and better utilization of transportation, educational and recreational facilities; industry is seeking greater productive use of high-cost capital equipment. There has been a growing demand for the modified work week. Several patterns of weekly hours nave been implemented to meet a variety of work situations. These range from the unstructured work day, where the employee establishes nis own start and stop times, to the more familiar 4-day, 40-hour or 3-day, 36-hour weeks. About three thousand firms in Europe are reported to be on the flexible or unstructured work day.

The Labour Code should recognize this phenomenon and should be amended to allow not any particular variation of work hours but any variation that meets reasonable standards. The purpose of the hours standards was the protection of workers from excesses in hours of work; but within the limits prescribed by law a certain flexibility should be permitted in recognition of the variety of work situations that exist.

Where there is a duly certified bargaining agent the law has a lesser responsibility to protect the worker, in that the union in large measure assumes that responsibility. The law also recognizes the need for flexibility in that it permits averaging of hours of work where there is irregularity in the hours of work. But it is doubtful that the existing averaging provisions are broad enough to accommodate the modified work week in all cases. In many situations the modified work week is desired for employees who have regular hours of work and therefore cannot be put under the averaging provisions of the Code unless the distribution of hours is deemed to be irregular in the sense that the work week is other than a 5-day week.

The procedure presently available for the regulation of the modified work week is inadequate in that it can be used only where the application of the Code without modification is unduly prejudicial to the interests of the employees, or seriously detrimental to the operation of the establishment. The application of this strict rule, which admittedly was designed to protect the employee, may in some circumstances inhibit and frustrate him.

The parties to a bona fide collective agreement should be free, within certain prescribed legal limits, to agree on the distribution of hours of work in a day, in a week, or in a longer unit of time.

Bell Canada submits that it is advisable to amend Part III of the Code by way of an amendment to the Regulations. The present eligibility requirements for averaging hours of work up to 13 weeks, namely, irregular distribution of employees' hours, should be widened to include situations where the employees have:

> regularly scheduled hours, but the hours are scheduled on other than a 5-day week, in accordance with the terms of the collective agreement; or where no bargaining agent has been certified, the Minister may, on application of the employer, consider the wishes of the employees involved and issue a permit authorizing such scheduling.

Also, a similar amendment should be made to the Regulations to permit averaging over a period longer than 13 weeks, where the Minister is satisfied that such longer period is necessary.

Although Bell seeks an amendment to the Regulations to permit averaging for 2-week periods or longer, the company doubts that an amendment is needed to section 29(2) of the Code, which permits averaging "where the nature of the work in an industrial establishment necessitates irregular distribution of an employee's hours of work". Bell believes that

this can be construed to mean that other than a 5-day week constitutes irregular hours and, if so, no amendment to the Code is needed.

Bell believes that the 5-8-40 week is still the predominant hours standard, as it was in 1965 when the Code was enacted, but there is a growing move to fewer days and more daily hours in the work week; therefore, 5-8-40 hours is not now as predominant as formerly. The general movement toward a smaller total of weekly hours is slow; the movement toward fewer working days per week is definitely in existence but it is a small movement as yet.

Having more leisure could lead to demands for more money, but in collective bargaining it is the total package, covering all conditions of employment, that is emphasized, which includes requests for more money. Under the modified work week there is no lessening of fringe benefits: general holidays, vacations, and sick leave. Although 2-week averaging would cover the present experiments, nevertheless because other more extensive flexible hours may be considered in the future, Bell wants continued availability to averaging up to 52 weeks.

The Commission pointed out that the Terms of Appointment, Item (2), referred to "fewer than five days a week". Was the Bell proposal really two kinds of modified work week in succession? Bell agreed that it could be regarded in that way.

Approximately one third of Bell employees are providing services on a 24-hour basis and are on the 8-12-80 plan. Ten-hour shifts do not fit this operation. About twelve thousand clerical employees are spread over nearly every department. Most of them are on a 37½-hour, 5-day week. Twenty-five are on a 4-day modified work week of 3 x 9½ + 9 = 37½. One group not yet on the trial will be put on 3 x 10 + 5 x 9 = 75 hours, 8 days, in two weeks. For employees on a 2-week cycle Bell will need 2-week averaging.

One year will be needed before there is available a conclusive report on the effects, good or bad, of the modified work week. So far no appreciable fatigue has been noticed. Although Bell pressed for continued availability of 13-week averaging, the company did admit that 2-week averaging would cover the present situation.

Bell has no clear evidence as to the extent of moonlighting, either by those on the modified work week or by the others, most of whom are on the bi-weekly schedules. The questionnaire sent to the approximately 260 people now on the modified work week contains a question on moonlighting. But some people doing it may not admit it; and in those cases the only way it might show up is in deterioration of job performance. There may not be much change in the extent of it. Extra work in the evenings on the days of longer hours may be less, on the longer weekends may be more, and the two might balance each other.

CANADIAN RAILWAY LABOUR ASSOCIATION

The Canadian Railway Labour Association sent a brief to the Commission on November 3, 1972, and later appeared at a hearing on November 7. The Association was represented by:

Mr. W.C.Y. McGregor	Chairman, Canadian Railway Labour Association
Mr. J.F. Walter	Vice-Chairman, CRLA
Mr. Richard D. Vanderberg	Executive Secretary, CRLA
Mr. W.M. Thompson	Vice-President, Brotherhood of Maintenance of Way Employees
Mr. G.D. Robertson	General Chairman, System Federation, BMWE (CPR)
Mr. Paul A. Legros	General Chairman, System Federation, BMWE (CNR, Eastern Lines)
Mr. H.A. Stockdale	Brotherhood of Railroad Signalmen
Mr. J.E. Dubois	General Chairman, BRS

The Association represents 17 trade union member organizations and speaks on behalf of all 17 unions. The principal problems under discussion relate more particularly to certain collective bargaining arrangements between the two railways and three unions:

1) Brotherhood of Maintenance of Way Employees;

2) Transportation-Communication Division, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees;

3) Brotherhood of Railroad Signalmen.

The Association representatives stated that a number of arrangements in the railway industry are in jeopardy because of the manner in which the 8-hour day as a standard day is

defined in the Labour Code. The Code requires that time and one half must be paid after eight hours in a day.

As an example of the type of arrangement referred to, the Association quoted article 7(c) of the current agreement between CP Rail and the Brotherhood of Railroad Signalmen, which provides that:

> "(c) Employees in signal gangs in order to get home for weekends and the men in the gang being agreeable may, upon request to the Signal Foreman and with the approval of the Signal Supervisor, work in excess of 8 hours per day at the pro rata rate, 40 hours worked will constitute one work week. Any time worked over 40 hours in any one work week shall be considered as overtime. Where weekly trips cannot be arranged due to the gang working a long distance from their homes and arrangements are made for the men to go home the second week, any time worked after the first 40-hour week will be considered as another work week and no overtime will be allowed until another 40 hours has been worked."

In brief, this means that when there is agreement between the signal gang at a location and the foreman and supervisor, the 40-hour week may be worked in less than five days at regular rates of pay. If the signal gang is at a location where it is difficult for the men to go home each weekend, under the foregoing arrangement the employees may work up to 80 hours in two weeks at regular rates of pay, so as to have a longer time bi-weekly to return home. These practices have been in use for 15 or 20 years by agreement between the employer and the union, and their continuance is in jeopardy because of the restrictive nature of the Code. The Association claims that these practices maintain the principle of the

40-hour week except that a rearrangement of hours may be made as described above, on a mutual consent basis.

As an example: a signal gang is required to work in Northern Ontario but the employees live in Montreal. By agreement under 7(c) above, the gang would work eight 10-hour days and then go home for six days. Or it might elect to work eight 9-hour days and one 8-hour day, total 80 hours, and have the five remaining days in the bi-weekly period to visit their homes. All regular hours are at straight time.

The Association contends that railway conditions diverge dramatically from those in other sectors, and the provisions of the Code, if strictly enforced, would have a discriminatory effect on the railway industry and also place restrictions on the results of collective bargaining which were not intended by the law. Specifically, it would not allow the hours arrangements described above.

As indicated earlier, these arrangements have been in effect for many years before the Code came into effect on July 1, 1965. Since that date the Canadian railways have had a deferment of the Hours of Work provisions of the Code. But the deferment was terminated in February 1972 for the non-operating employees of the railways, and it is only since then that there has been a realization that the enforcement of the hours requirements of the Code would disallow these special hours arrangements for employees working at isolated locations who greatly

desire enough time off weekly, bi-weekly or even tri-weekly to visit their homes.

The CRLA is aware that in some situations the employers have contemplated or are using the averaging provisions of the Code to regularize these special hours arrangements, but the unions are not fully conversant with all the facts concerning the extent to which averaging is so applied. If averaging is used, the unions have doubts as to the probability of its continuance, since the special patterns of hours in these isolated locations are regular hours of work, rather than irregular hours which are a prerequisite to the use of averaging.

Because of the danger to non-union workers, the Association is opposed to any amendments to sections 29 (Standard Hours) and 30 (Maximum Hours) of the Code. Sections 33 and 34, dealing with overtime permits in exceptional circumstances and in emergencies, do not meet the situation on the railway service because, under those sections, permits are issued for specific periods of time. The Association requested that section 32.1 be amended to permit the Governor in Council to grant exemptions to certain employers and classes of employees from the standard hours provisions of the Code. This would permit deviations from the hours of work standards when such deviations are provided for in a collective agreement and are approved by the Minister of Labour.

The Association said this proposal would leave sections 29 and 30 intact, thus maintaining protection of the unorganized workers. It would also provide a degree of flexibility to those industries and workers under collective agreements. This change in the legislation would permit a limited amount of experimentation and, at the same time, ensure that the spirit of the hours of work sections of the Canada Labour Code is adhered to.

The Association also suggested that the legislation should be amended so that it would be unnecessary to conduct inquiries into modifications of hours of work standards resulting from labour negotiations.

After the brief was presented there was some discussion of the union's proposal to amend section 32.1. This is a section which provides for regulations by the Governor in Council. The CRLA is seeking to have hours adjustments made by ministerial decision, in special circumstances, without changing the basis of the statute, namely, the standard hours of 8 and 40 and maximum hours of 48 per week. Averaging allows multiples of 40 and 48 to be used, and there are deductions of 8 hours for a general holiday and 40 hours for a week's vacation occurring within the averaging period. There was some agreement among the officials, and some doubts, that averaging over two or even three weeks would permit these special arrangements on hours of work.

The Commission expressed the view that it would be necessary to amend the legislation in order to clothe the Minister with authority to permit averaging of these special hours arrangements which are arrived at by bargaining but are not irregular hours of work as presently required by the regulations. If this were done it would not be necessary to seek relief by way of a regulation of the Governor in Council under section 32.1, a procedure which in some instances requires an inquiry by a commission under Part I of the Inquiries Act.

CANADIAN NATIONAL RAILWAYS and CANADIAN PACIFIC LIMITED

Canadian National Railways and Canadian Pacific Limited jointly wrote a letter to the Minister of Labour on September 19, 1972, concerning arrangements which had been in effect for many years, primarily for the convenience of the employees. The principle of 40 hours a week is retained but the hours of work of some employees of the companies are arranged in such a way that on certain days the employees may work in excess of 8 hours. This could be through the use of the 4-day week or the 5-day week with, on certain days, hours being worked in excess of 8 and, on others, less than 8. All such hours are paid at straight time rates. Because of the restrictive wording of the Code in defining 8 hours as a standard work day, such arrangements are in jeopardy since the Code requires that hours worked in excess of 8 in a day must be paid for at time and one half.

The Minister of Labour referred the matter to this Commission of Inquiry.

The two companies submitted a brief to the Commission on November 3 and at a hearing of the Commission on November 7 were represented by:

Mr. J.A. McGuire	Manager, Labour Relations, CP Rail
Mr. Donald V. Brazier	Labour Relations Officer, CP Rail
Mr. George J. Milley	Manager, Labour Relations, CNR
Mr. Brien Noble	Labour Relations Officer, CNR

The brief presented by the parties described the arrangements referred to in the letter to the Minister. These hours of work arrangements were designated as modified work weeks, sanctioned by express provisions of collective agreements in some cases and in others established by local agreements between the employees, the union representative and the company officers.

In each case the arrangements have reflected three criteria:

(1) Both the company and the employees have been agreeable to the arrangement;

(2) The purpose of rescheduling the employees' hours has been to allow them longer periods at home;

(3) The principle of the 40-hour work week has been recognized, and hours worked in excess of 40 hours have been paid at time and one half. (Commission Note: There are exceptions to this.)

The work practices with respect to the modified work week in effect in both companies may be broadly segmented into three categories:

Category 1 - 40 hours are worked in less than five days per week.

Category 2 - 40 hours are worked in five days but on certain days hours are worked in excess of 8 and on others, less than 8.

Category 3 - The principle of the 40-hour week is respected but the scheduled hours are spread over more than one week. (Commission Note: In Example 3, following, premium overtime is paid after 80 hours, and in Example 6 is paid after 120 hours.)

The brief gave six examples of these arrangements, three from each company.

Example 1

A CP telecommunication gang operating in Ottawa works 10 hours a day Monday through Thursday, total 40 hours, to enable the employees to go early on Friday to their homes, about 215 miles away, in La Perade (approximately 25 miles east of Trois-Rivières) for the weekend. They return to work on Sunday afternoon; thus they have two days at home. If they worked five 8-hour days they would have less than 24 hours at home on the weekend. This is a collective agreement arrangement.

Example 2

A CP signal gang works at St-Martin Junction (Ile Jésus). Some of them live at Ottawa, 125 miles away, and others at Québec City, 175 miles distant. To enable the employees to reach home early Friday evening after work, their weekly schedule is: Monday, 7 hours; Tuesday, Wednesday and Thursday, 9 hours; Friday, 6 hours to 3.00 p.m. - a total of 40 hours. They start work again on Mondays at 10.00 a.m. This scheduling of hours is authorized by collective agreement.

Example 3

A CP telecommunication gang working at Thunder Bay consists of employees living in Winnipeg. Because of the distance (about 410 miles), it is impractical, from the employees' point of view, to return home on their rest days. A work arrangement was agreed to whereby the employees work 9 hours a day for nine days in succession and 4 hours on the tenth day for a total of 85 hours in nine and a half days, of which 5 hours are paid for at time and one half. This gives the men four and one half days off every two weeks, enabling them to return home on the only train available from Thunder Bay at 2.30 p.m. This is an arrangement by collective agreement.

Example 4

A CN maintenance of way gang at Coteau, Québec, works four days of 10 hours each, total 40 hours. The purpose of this modified work week is to allow the men to take advantage of train schedules to return to their homes in Belleville, Ontario, about 200 miles away. If they worked the regular week of five 8-hour days they would have less time at home each weekend. This was arranged locally by the employees, the union representatives and the company officers.

Example 5

A CN maintenance of way gang works at Casselman, Ontario, on a schedule of four days of 9 hours each and one day of 4 hours, total 40 hours. The purpose of this modified

work week of four and a half days is to allow the employees to take advantage of train schedules to return to their homes in Belleville, some 222 rail miles away, each weekend. Travelling arrangements for these employees are such that if they worked the regular work week they would arrive in Belleville early Saturday morning and would have to return to Casselman on Sunday evening. This schedule of hours was a local arrangement.

Example 6

A CN masonry repair gang works at various locations in Northern Ontario, such as Gladwick, Leigh and Gogama. Of the 24 employees involved, 15 live at Shawinigan, Joliette and Lévis, in Québec. Train travel from their work to their homes takes 15 hours or more. It is impractical to schedule two rest days each week. The following work arrangement has been in effect for many years by local agreement between the parties: the employees work twelve days of 10 hours each, followed by nine days off, resulting in 120 hours of work at regular rates of pay in a three-week period.

The arrangements in Examples 1 and 3 are provided for under the terms of a collective agreement between CP Telecommunications and the Transportation-Communication Division of the Brotherhood of Railway, Airline and Steamship Clerks. Article 9.03 of the agreement reads as follows:

> "A gang working under the supervision of a foreman may, upon request to the foreman by the majority of the men in the gang and subject to approval of the supervisor, arrange to work in excess of the regularly assigned hours per day at pro rata rates in order to get home

> for the weekends. The hours so established to be the equivalent of the regularly assigned hours for the week. Time worked in excess of the hours so established will be considered as overtime."

These collective agreement arrangements have been in effect for 21 years.

The arrangements in Example 2 are covered by a collective agreement between CP Rail and the Brotherhood of Railroad Signalmen. Article 7(c) of the agreement reads as follows:

> "Employees in signal gangs in order to get home for weekends and the men in the gang being agreeable may upon request to the signal foreman and with the approval of the signal supervisor work in excess of 8 hours per day at the pro rata rate. Forty hours worked will constitute the work week. Any time worked over 40 hours in any one work week shall be considered as overtime. Where weekly trips cannot be arranged due to the gang working a long distance from their homes and arrangements are made for the men to go home the second week, any time worked after the first 40-hour week will be considered as another work week and no overtime will be allowed until another 40 hours has been worked."

This collective agreement arrangement has been in effect for 12 years.

In Examples 4, 5 and 6, all Canadian National, the work schedules were agreed to by local arrangements between the employees, the union representatives and company officers, and have been in effect for 15 years or more.

The CNR officials said there is no particular reason why these hours arrangements were not written into collective agreements. The employees' representatives and the company felt it was a good thing, the practice had carried on for a number of years, and it became accepted and acceptable to the

extent that it was not considered necessary to put it in as part of the agreement.

The Commission noted the length of daily hours in some of the cases cited. In Examples 1 and 4 the employees work four 10-hour days each week; in Example 2 the employees work three 9-hour days each week; in Example 3, nine successive days of 9 hours each; in Example 5, four days of 9 hours each; and in Example 6, twelve successive days of 10 hours each. The Commission asked if there had been any problem with respect to fatigue, errors, work injuries or accidents by reason of these longer daily hours.

The railway officials replied that these hours have not caused any problem that they are aware of with respect to increased injuries or accidents. These practices have been in effect for many years, and if the employees had believed that the long hours were harmful in this way, they would have objected to them; and they have not done so.

In the submissions, both written and oral, the officials used the phrases "the principle of the 40-hour work week has been recognized" and "the principle of the 40-hour week is respected". But in some situations the practice is to pay premium overtime after 80 hours work in two weeks, and after 120 hours in three weeks.

The officials explained that in 1951 the railways and the employees' representatives agreed to institute the 40-hour work week. When an employee works 80 hours he is given

at least four rest days, so in broad terms perhaps the principle is being respected. The same applies to the three-week period. The three 40-hour periods are put together, the employee works twelve days and is given nine days off. Any work outside the scheduled hours is paid for at the premium overtime rate. Actually, the parties are respecting the 40-hour week as a multiple, the same principle as in averaging permitted by the Code.

The railway officials agreed that, if they had been able to secure approval for averaging of hours of work under the Code and were reasonably sure that averaging would not be questioned or withdrawn, then it would not have been necessary to make these representations.

The two railway companies recommended to the Commission that where the three aforementioned criteria have been observed - that is, where there is agreement between the company and its employees - the scheduling of hours is for the purpose of allowing the employees longer periods of time at home, and the principle of the 40-hour week has been observed, then Part III of the Canada Labour Code (Labour Standards) and any necessary regulations should be amended to allow such work practices to continue.

THE CANADIAN CHAMBER OF COMMERCE

On November 8, 1972, Mr. O. Tropea, Chairman of the Executive, The Canadian Chamber of Commerce, wrote to the Commission and submitted for consideration the Chamber's approved policy on the modified work week. This policy was set out in the following terms:

> "Minimum standards provisions can interfere with the collective bargaining process by inhibiting the parties from establishing the balance of benefits best suited to the requirements of their particular situation; hence, it is our view that employees covered by a bona fide collective agreement should be exempt from application of the Canada Labour (Standards) Code."

The Chairman explained that the over-riding reason for this policy is to provide maximum flexibility in establishing conditions of employment that are mutually acceptable.

The Executive Council believes that this flexibility should also be available in non-unionized situations where there is agreement between an employer and his employees. Third-party supervision might be required to determine the employees' views. In those cases the averaging provisions will provide maximum flexibility.

At this point the Commission wishes to mention that the latter part of the policy statement, namely, that employees covered by a collective agreement should be exempt from application of the Canada Labour (Standards) Code, is a suggestion that is greatly in excess of anything that has been asked for

by any union appearing before the Commission. Generally, the unions have requested that the Code be made flexible enough to accommodate hours arrangements that are agreed to by collective bargaining, provided those arrangements are in line with the general intent of the Code.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION

Correspondence was received from Mr. R.C. Basken, Edmonton, Alberta, the International Representative of this union. The Canadian District 9 Council Conference of the union conducted a survey on hours of work. The extensive questionnaire was sent out to every fifth member on the seniority list in the 94 bargaining units that were affected - some 1,800 employees.

The preliminary report, June 1972, was sent to the Commission. Some of the findings relate to matters that are being reviewed in this Inquiry.

Question 35 asked day workers for preferences on working longer daily hours in order to get more days off, assuming the same total weekly hours.

Forty-nine per cent were willing to work longer daily hours, weekly hours remaining the same; 46 per cent were not willing to do so; 5 per cent had no preference or did not reply.

Question 42 asked all employees (day, 41 per cent; shift, 59 per cent) for preferences of combinations of work days and daily hours where the total hours continue to average about 40 per week.

On a first-choice basis, 44 per cent chose five days of 8 hours each; 29 per cent selected four days of 10 hours each; 19 per cent preferred three days of 12 hours each; 3 per

cent listed various combinations of hours and days to average 40 a week; and 5 per cent was divided among the other choices listed.

Question 45, to all employees, related to preferences in reducing total hours worked.

On a first-choice basis, 51 per cent chose fewer work days each week; 17 per cent selected shorter work days; 16 per cent preferred increased vacation time; 11 per cent did not answer; and 5 per cent was divided among other selections.

Question 53, to all employees, asked whether the employees had a part-time or irregular job away from their regular place of employment.

Six per cent had a part-time job; 90 per cent definitely did not engage in part-time work; and 4 per cent did not answer.

Question 57, to all employees, asked whether the employees would seek a part-time job if they got more time off from their regular job than they now have.

Eighty-one per cent said they still would not seek part-time work even if more time were available to do so; 8 per cent would attempt such employment; 6 per cent were doubtful; and 5 per cent did not reply.

Commission Comments

There was a strong preference among day workers for longer daily hours in order to have more days off, where the total weekly hours remained the same.

Where the weekly hours averaged 40, slightly less than one half of the day and shift employees favoured the traditional five-day week of 8 hours daily; about one third selected four days of 10 hours each; and one fifth preferred three days of 12 hours each.

On the question of reducing total weekly hours, the majority of all employees favoured fewer work days; the others were divided on shorter work days or increased vacation time.

The amount of moonlighting is low and evidently would increase only slightly when hours of work are adjusted so that there would be more time off.

FATIGUE: ACCIDENTS: INJURIES

Conflicting claims were made to the Commission respecting hours of work and the rates of accidents and work injuries. The Canadian Brotherhood of Railway, Transport and General Workers contended that the longer work day would show increasing weariness on the part of the worker, which would lead to an astronomical increase in the number of injuries and accidents arising from fatigue. The union officers admitted that they had no specific statistics to support this, but said it was a theory commonly held and allegedly logical in substance.

The Canadian Labour Congress said that fatigue is difficult to assess, to measure and, indeed, to recognize. A worker subject to fatigue cannot but be a careless worker - one who is prone to industrial accidents.

CP Air and Air Canada referred to a report made by the Pennsylvania Bureau of Research and Statistics covering 1968. This report had, among other things, a compilation of work injuries related to hours of work. The Commission secured and studied copies of the report dealing with both 1968 and 1969.

The report covers 18 manufacturing and 20 non-manufacturing industrial groups in the State, and shows a total of 96,512 work injuries in 1968 of which 626 were fatal and 95,886 were non-fatal. The similar figures for 1969 were a total of 98,879, of which 672 were fatal and 98,207 were non-fatal.

These work injuries occurred in the following time sequence throughout the hours of work in a day:

Hour	Number of work injuries per year	
	1969	1968
1st	12,198	11,008
2nd	10,472	10,068
3rd	10,683	10,364
4th	8,400	8,413
5th	6,293	7,047
6th	7,844	7,841
7th	8,683	8,386
8th	7,103	7,155
9th or more	3,987	3,947
Time not given	23,116	23,284

This showed that over the first 9 hours the greatest number of work injuries occurred in the 1st hour and, except for the 3rd hour, decreased in each successive hour until the 6th hour: this showed an increase over the 5th hour; the 7th showed an increase over the 6th; the 8th showed a decrease from the 7th; and in the 9th hour or more there was a definite decrease by about one half of the number of work injuries in the 8th hour. The smaller number of work injuries occurring after 8 hours is probably because fewer employees work 9 hours or more.

Air Canada and CP Air quoted from the Pennsylvania Report the numbers of work injuries in 1968 in the first eight hours and concluded that, from the admittedly sketchy evidence available, it would seem that under a modified work week the industrial accident rate would be influenced by the reduction in the number of shift start-ups in each work week.

The National Institute of Industrial Psychology, London, England, has recently issued a 1971 report on a study of 2,000 accidents and their causes in industrial workshops. The Commission has noted that the findings respecting distribution of accidents over the hours of the day had three characteristics.

First, the accident rate is higher in the morning than in the afternoon, and the peak time for accidents occurs after mid-morning. Second, there were localized peaks of accidents occurring before breaks. Third, at the end of the afternoon the peak of accidents was either non-existent or was less pronounced and preceded by a decline as people stopped work to tidy up before going home.

These statistical readings covered four kinds of industrial workshops over a period of from one to two years. Very little overtime was worked in three of the four types of workshops and no readings were obtained in relation to accidents. In the other workshop some weekend overtime was worked and accidents were more numerous in the overtime hours.

The Workmen's Compensation Board of British Columbia issued in 1971 a study of the biorhythm theory of accidents. This theory is that people's lives are influenced by their life rhythms, and people are more accident-prone when these rhythms are in certain "critical periods" than at any other time. The findings are somewhat inconclusive but do suggest that persons are more prone to accidents on some days than on others, on account of factors not directly related to the work place.

There are so many variables and inconclusive statistical findings on this question that it is difficult to arrive at any consistent theory relating to the rate of work injuries and accidents to the time spent on the job.

In many of the situations where employees contemplate operating on the basis of the modified work week, the working conditions are such that there is little risk of accidents on normal hours or even on extended hours. On other kinds of work, where the employees are handling power tools or are exposed to the elements, there are greater risks. It would seem that longer hours of work may directly influence the rate of injuries and accidents in some types of work to a greater extent than in other work situations. However, when the daily hours are long the exposure to hazards each day is greater in the aggregate, and this may be reflected in an increased total of work injuries and accidents on the average each day.

LEGISLATIVE REQUIREMENTS IN THE PROVINCES

The principal impediment to the adoption of the modified work week is the legal requirement to pay a premium overtime rate on a daily basis, usually after 8 hours a day.

Most employers say that the cost of paying a premium overtime rate on a daily basis is such that the modified work week is uneconomic. They therefore will consider the work week of less than five days only when the daily hours worked are on a straight time basis.

In certain provinces the hours standards legislation requires payment of a premium overtime rate on a weekly basis, mostly after 48 hours per week, but not on daily hours worked. There is practically no limit on the hours worked, provided the overtime rates are paid. For most employments this is the case in Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland. There is one partial exception in Newfoundland: time and one half the regular rate of pay is required after 8 hours in a day or 40 hours in a week for employees in shops in any part of the province. With this one exception there is no legal overtime pay requirement inhibiting the use of longer daily hours in these five provinces, and consequently it appears that no authorization is needed to use a modified work week.

Provincial legislation in British Columbia sets a maximum number of hours per day and per week beyond which an

employee must not work except by authorization from the competent authority. Any excess hours that may be permitted require the payment of one and one half times the regular rate of pay after 8 hours in the day or 40 hours in the week. This year the Board of Industrial Relations relaxed the punitive rates after 8 hours in a day for a few industries on an experimental basis in order to allow the use of the modified work week. After the Board has had an opportunity to assess these cases, information on the experiments may be available to the public.

The legislation in Alberta sets a maximum of 8 hours per day and 44 hours per week beyond which the employee must not work except by permit. When permission is given to exceed the maximum hours, the overtime rate is generally time and one half the regular rate after 9 or 44 hours. The Alberta Labour Act was amended in 1972 to provide the Industrial Relations Board with the power to establish, with prior approval of the Lieutenant-Governor in Council, general criteria for permitting longer work days within the weekly limits in order to provide for 3- or 4-day work weeks.

In Ontario the maximum hours are limited to 8 in a day and 48 in a week, but permission may be given to exceed those hours. Overtime at time and one half is required for hours worked in excess of 48 per week, or after 50, 55 or 60 depending on the class of work.

In September 1972 the Research Branch of the Ontario Ministry of Labour issued a report on The Compressed Work Week in Ontario. The most popular type of compressed work week is based upon the 4-day week with hours set at 40, less than 40, or more than 40 per week. A few schedules involve a 3-day, 36-hour weekly arrangement. In some others the employees work three days and then have the next three days off. One schedule is the seven-shift, 80-hour scheme in effect in four hospitals. Under this plan nurses work six 12-hour shifts and one 8-hour shift to a total of 80 hours over a 2-week period. There are several more complex schemes.

The legislation in Saskatchewan sets standard hours, as opposed to maximum hours, and requires time and one half after 8 hours in a day or 40 in a week. In 1972 an amendment provided for the establishment of a 10-hour day, 4-day week by permit. Where an employer and his employees agree in writing to work a 4-day week, the Minister of Labour may authorize the employees to work four 10-hour days without the payment of overtime. By mid-1972 some 30 permits had been issued.

The labour legislation for most employments in Manitoba sets standard hours, not maximum hours. It applies generally and requires time and one half the regular rate after 8 hours in a day or 44 in a week. The working hours may be varied in certain circumstances without the payment of the overtime rate, in order to allow a work week of less

than 6 days, but not exceeding the weekly limit of 44 hours. The concurrence of the employees is required. Under this legislation the Manitoba Labour Board has approved a number of employer-employee applications to work a 4-day week of 40 hours.

From the foregoing it will be noted that permission from the relevant administrative authority to use a modified or compressed work week is required only in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario. In the other five provinces these restraints are almost entirely absent.

LEGISLATION IN THE UNITED STATES

At Washington, D.C., on September 7-8-9, 1971, the Wage and Hour Division of the Employment Standards Administration of the United States Department of Labor held a hearing into the proposed adoption of a four-day, forty-hour work week without payment of time and one half overtime compensation for work days exceeding eight hours. The Hearing Examiner was E. West Parkinson, Esq., assisted by Eric Feirtag, Esq., Attorney, Office of the Solicitor, U.S. Department of Labor, and Mrs. Dorothy Come, Chief of Division, Government Contract Regulations, Employment Standards Administration, U.S. Department of Labor.

The hearing was primarily concerned with the problem facing government contractors who want to adopt a four-day, forty-hour work week and still avoid the payment of overtime after eight hours.

There are two laws which prevent this: the Walsh-Healey Public Contracts Act, and the Contract Work Hours and Safety Standards Act.

The Walsh-Healey Public Contracts Act applies to federal contracts in excess of $10,000 for the manufacture or furnishing of materials, supplies, articles or equipment. The Contract Work Hours and Safety Standards Act applies to most federal construction contracts in excess of $2,000, to service

contracts in excess of $2,500, and to supplies contracts in excess of $2,500 but less than $10,000.

The U.S. Department of Labor has no present authority to waive the overtime requirement after eight hours a day under the Walsh-Healey Public Contract Act. The Labor Department can waive the overtime provision under the Contract Work Hours and Safety Standards Act, but only on showing that it is necessary and proper in the public interest, to prevent injustice or undue hardship, or to avoid serious impairment of the conduct of government business.

In the three days of direct testimony and cross-examination of witnesses, the views of 23 persons or organizations were heard, each representing a union, company or other entity. Seven international and national unions said they were not in favour of waiving the 8-hour day overtime in order to permit the 4-day, 40-hour week. Six companies were in favour of relaxing the overtime provisions. One management consulting firm approved the removal of the overtime provision, and one did not wholly approve. One economist was for it and one was opposed. The U.S. Chamber of Commerce approved. One federation of government employees agreed that the change should be made and one company which supplies employees on a short-hours daily basis had no special opinion. One business federation had no opinion on the question, but two others were in favour of the proposal.

In general, the unions were opposed to any relaxation of the payment of overtime after eight hours a day, since they regard the 8-hour day as a landmark in matters of employment - an objective for which labour has fought for many years to achieve. Most of the companies cited the employees' desire to have a longer weekend ("blocks of leisure", they called it), and the probability that the rearranged schedule of hours would improve productivity and profits, lessen tardiness and absenteeism, enable the companies to recruit more competent workers, and various other reasons. One economist stressed the growing desires of employees for greater leisure by the week and more influence in arranging their working hours to suit themselves and to avoid the characteristic 9-to-5 cycle. The other economist, from the Department of Research, AFL-CIO, opposed the 4-day week on the basis that federal laws covering work on government contracts must continue to protect workers against excessive hours of work per day, as well as excessive working hours per week.

After the hearings a news release was issued by Mr. Horace E. Menasco, Deputy Assistant Secretary for Employment Standards Administration, on March 8, 1972, which was to the effect that:

> "A careful analysis and evaluation of the full written and oral record of these hearings shows that no persuasive or conclusive evidence has been presented or may be adduced to establish that an administrative change

> in or waiver from the present daily overtime standards of the above statutes would be in the public interest at the present time.
>
> "Consequently, the Department of Labor does not find a basis to recommend any administrative action leading to modifications in the daily overtime provisions of the statutes, nor does it propose to grant individual waivers or exemptions at this time."

This was printed in the Federal Register on March 15, 1972.

It would seem that the several thousand companies in the United States that are reported to be using the modified work week for some or all of their employees are doing so under state laws which, with some exceptions such as New York, require overtime on a weekly rather than on a daily basis. There may also be some adoption of the modified work week under the Fair Labour Standards Act, applying generally to interstate commerce, which requires overtime pay after 40 hours per week, not on a daily basis.

INTERNATIONAL INSTRUMENTS ON HOURS OF WORK

In considering whether an amendment should be recommended in the hours of work provisions of the Canada Labour (Standards) Code, it seems appropriate to review international hours of work standards and to evaluate, if possible, the extent to which a Code amendment would comply with those standards.

Convention 1: Hours of Work (Industry), was adopted by the International Labour Office in 1919. As of June 1, 1971, it had been ratified by 33 states. Canada ratified this Convention in 1935, but the implementing legislation enacted by the Parliament of Canada was declared ultra vires by decision of the Privy Council in 1937. Canada has not yet achieved full compliance with this Convention.

All provinces and the Territories have enacted legislation on hours of work, and the federal government did so in 1965. However, no jurisdiction in Canada is in complete compliance with the Convention. There are several problems in provincial and territorial jurisdictions:

(1) Coverage is not yet complete;

(2) In a few cases legislation permits a standard work week of more than 48 hours in certain circumstances; in some cases there is no limit on hours of work, so long as overtime rates are paid;

(3) In some jurisdictions overtime rates are based on the minimum wage, and this may not equal the ILO standard of time and one quarter the regular rate of pay.

In the federal jurisdiction, certain features of the Canada Labour (Standards) Code do not comply with the Convention. The transport of goods by motor vehicle is governed by an Order which permits working hours of 10 in a day and 60 in a week. The shipping industry in Newfoundland, on the east coast and the St. Lawrence River is under special Orders which permit extended hours of work. The railway running trades are still under a deferment of the hours of work provisions of the Code.

ILO Convention 1 applies to all industrial undertakings including mining, manufacturing, construction and transportation. It limits working hours to 8 in a day and 48 in a week. These limits may be exceeded only in certain circumstances defined in the Convention. A 9-hour day is permitted where the hours of work on one or more days of the week are less than 8, so long as the weekly hours do not exceed 48. The rate of pay for overtime beyond 48 hours should not be less than one and one quarter times the regular rate.

A modified work week of, say, four days of 9 hours each would appear to be within the standards of the Convention, which allows up to 9 hours in a day and 48 hours in a week where the hours worked on one or more days of the week are less than 8.

The Convention, in Article 2, permits averaging of the hours of work over a period of three weeks or less for persons employed on shifts.

Article 5 provides for the averaging of weekly hours of work in exceptional cases where there are agreements between workers' and employers' organizations. This may be done over the number of weeks covered by any such agreements, and may be given the force of regulations, if the Government so decides.

No doubt when the Convention was adopted, more than half a century ago, no thought was given to the possibility of a 4-day, 40-hour work week. Any amendment to the Code which provides for a 4-day week of 10 hours a day would, in most situations, appear to comply with either Article 2 or Article 5 of the Convention in respect to those industries within federal jurisdiction to which the Convention would normally apply.

Convention 47: Concerning the Reduction of Hours of Work to 40 in a Week, was adopted by the ILO in June 1935. The Convention declares its approval of the principle of a 40-hour week and the taking or facilitating of such measures as may be judged appropriate to secure this end.

Recommendation 116: Concerning Reduction of Hours of Work, was adopted by the General Conference of the ILO in Geneva in June 1962, to supplement and facilitate the implementation of the existing international instruments concerning hours of work. It urges each member state to formulate and pursue a

national policy designed to promote in each industry the adoption of the principle of the progressive reduction of normal hours of work with a view to attaining the social standard prescribed in the Forty-Hour Week Convention 1935, and the Hours of Work (Industry) Convention 1919, without any reduction in the wages of workers as at the time the hours of work are reduced.

Normal hours of work are defined in the Recommendation as the number of hours fixed in each country by or in pursuance of laws or regulations, collective agreements or arbitration awards or, where not so fixed, the number of hours in excess of which any time worked is remunerated at overtime rates or forms an exception to the recognized rules or custom of the establishment or of the process concerned.

The Recommendation also provides for averaging, and specifies that the calculation of normal hours of work as an average over a period longer than one week should be permitted when special conditions in certain branches of activity or technical needs justify it. The competent authority in each country should fix the maximum length of time over which the hours of work may be averaged.

It would seem that this plan of averaging would apply to all forms of the modified work week that have been suggested to the Commission in its present Inquiry. Thus any amendment to the legislation to this end, if it is not fully in compliance with Convention 1, might be deemed to comply with Recom-

mendation 116. This, of course, would depend upon the actual wording of any amendment enacted and, subsequently, a ruling on it by the appropriate ILO supervising authority in Geneva which deals with interpretations of these questions.

It will be noted that throughout Convention 1 and Recommendation 116 considerable emphasis is placed on the desirability of recognizing standards which are established by agreement between employers' and workers' organizations or, where no such organizations exist, between employers' and workers' representatives.

Many of the representations made to this Commission emphasized the need for the law on labour standards to recognize and permit the implementation of different kinds of arrangements on hours of work and overtime pay, provided they are within the fair and reasonable standards contemplated by the Code.

FLEXIBLE WORKING HOURS: CANADA, EUROPE, THE UNITED STATES OF AMERICA

Canada

In 1972 the Personnel Branch of the Department of Consumer and Corporate Affairs conducted an experiment on a rearrangement of hours of work, referred to as "flexible hours of work". This affected employees who are not under the Canada Labour (Standards) Code. The experiment involved about fifty employees in Ottawa for about four and one half months, from June to October.

The weekly hours remained at 7½ a day and 37½ a week. The employees were allowed to report for work any time between 7.00 and 9.00 a.m. and could leave any time between 3.30 and 6.00 p.m. as long as they worked 7½ hours each day exclusive of lunch time.

Employees were required to take at least a half hour lunch break but could take longer. In return for this privilege, all of them had to accept a system of recording the time worked.

The employees were required to be on duty during the core hours of 9.00 a.m. and 3.30 p.m., and other branches of the Department were requested to deal with the Personnel Branch as much as possible during those hours.

The experiment has now ended and is being assessed, but the employees are still on the plan. There are indications

that production has improved; more work has been done and less overtime has been paid.

Two reactions from the employees have been noted. The first advantage was the "quiet time" obtained by arriving early, when more work could be done free of telephones and callers. The second was the ability to arrange transportation to and from work to suit their personal needs.

All facets of the experiment are being carefully examined to determine whether this flexible hours arrangement should be extended to other areas in the federal public service.

Europe

This Commission has noted several articles that have been written concerning the development and use of flexible working hours in Europe, principally in Germany and Switzerland. This is a system whereby individual workers can come and go at their pleasure, within certain limits, provided they work a prescribed number of hours each week or each month. In most instances there are certain fixed hours during which everyone is required to be at work. In general, the span of one month is used as the period during which hours on the job must average out to a normal work week, plus or minus five or ten hours.

Although there are various hours arrangements, in most of them the employee can decide what hours he works on any particular day, but usually this is modified when demands

of the job require that on a particular day it is necessary that he be at work during certain hours.

There are, of course, advantages and disadvantages for the employers and employees. No attempt will be made to discuss them in this report. The important feature of the flexible hours system, from the standpoint of the employee, is that it permits him to participate at a basic level by choosing daily, within limits, the time that he will be at work and the time he will be free from labour, and thus he can make certain adjustments to his individual pace of living.

One principal advantage for employers is that there is a better working climate for the employees, with all the benefits of recruitment, low turnover, and improved production that may accrue from that.

The Commission has not come across any estimate of the extent of the use of the flexible hours system in relation to total employment. This is a relatively new development. It is reported to have started in Germany in 1967 and spread to Switzerland and other parts of Europe.

United States of America

One flexible hours plan has been reported in the newspapers, but there may be others. A flexible hours system has been in effect since June 1971 for about fifteen hundred employees in the State Department of Motor Vehicles, Albany,

New York. The employees are allowed to set their own starting and leaving times and the length of time of their lunch breaks, all within certain limits. Widespread employee acceptance of the plan is reported. The majority of the employees are women, most of them mothers of children.

SUMMARY OF THE PRESENTATIONS

1. The Canadian Brotherhood of Railway, Transport and General Workers believes that labour standards legislation should not inhibit the freedom of employees to experiment with more flexible and mutually beneficial hours of work patterns. In other words, the legislation should not prevent modified work week arrangements voluntarily agreed upon between employers and unions representing their workers. The principal obstacle is the requirement of time and one half pay for time worked in excess of 8 hours a day. There are many workers who are willing to forego that overtime rate for the reward of the four-day week and the lure of the three-day weekend.

The union has not yet ascertained how many of the employees of the St. Lawrence Seaway Authority wish to go on the modified work week, but wants to be in a position to negotiate with the Seaway Authority for such changes and implement them. At the same time, the union is opposed to any change in the basic standards of the Code, namely, standard hours of 8 a day and 40 a week and maximum hours of 48 a week.

The union would not deny to non-unionized employees the right to experiment in this area, but urged that a competent authority should first ascertain the wishes of the employees likely to be affected by the change in hours of work. The union suggested that section 32.1 be amended to permit a new regulation by the Governor in Council to vary hours of work

standards which are agreed to by collective bargaining. The section should also be amended to remove the necessity of holding an inquiry before such regulation can be enacted.

2. Air Canada and Canadian Pacific Air Lines said that the Labour Standards Code should be applied in such a way that hours of work arrangements which differ from the basic standards of the Code may be used when the employer and the employees believe this to be in their mutual interest. This gives the employees longer leisure time on weekends and saves considerable time and expense in travelling to and from work. The employer benefits from reduced absenteeism, more economic use of plant facilities, and reduced costs of start-up and shut-down times which may reduce the number of work injuries and accidents.

CP Air has a modified work week in effect for some employees by collective agreement and is now applying eight or nine different hours arrangements under the averaging provisions of the Code.

Under collective agreement provisions, some employees of both companies are on a nine-day cycle of six work days of 8 or 9 hours followed by three rest days, at straight time rates, an arrangement common in the airline industry where the companies must provide service continuously to the public. These work cycles are now legally possible under averaging, but there is some fear that averaging may be withdrawn since

the employees are on regular rather than the irregular hours which are a condition of the use of averaging. If averaging were cancelled, the situation would be chaotic.

The companies proposed that the Code be amended to permit averaging where the employees have agreed, through their bargaining agent, on an arrangement of hours other than 8 a day and 40 a week. Where there is no bargaining agent, the arrangements should be permitted if the majority of affected employees desire the changes.

3. General Aviation Services Ltd. had negotiated an amendment to the current collective agreement with the Machinists union at Winnipeg to establish a modified work week of four 10-hour days. The company later concluded that it would be uneconomic to make this change, and is now opposed to any revision of the legislation. When advised by the Commission that all representations presented to the Commission were for an amendment which would permit the modified work week on the basis of mutual consent, General Aviation had no objection to such an amendment.

4. The Canadian Labour Congress is opposed to any change in the legislation to accommodate the modified work week. The Congress Convention in May 1972 passed a resolution to that effect. Any move through legislation to permit a longer working day is premature. There should be no extension of the 8-hour day or the 40-hour week. If any change is made it

should be toward the 8-hour day and the 32-hour week. Over the years the CLC has pressed for a reduction of the day to 8 hours in the realization that longer working days are injurious to the health and safety of the majority of workers. The Congress seriously questioned the motives of those individuals and groups that are pressing for the longer working day, and urged the Commission to reject any move toward lengthening the day beyond the present 8 hours.

The Congress agreed that certain flexibilities in the Code are desirable to meet the individual worker's needs; for example, the averaging of hours of work for workers with irregular hours. Such flexibility must be kept within the existing minimum standards of hours of work. If additional flexibility is to be introduced it should be done without placing in jeopardy the present Code standards.

5. The Canadian Telephone Employees' Association believes that Bell Canada should be free to schedule hours of work to meet operational needs to the extent agreed to by negotiation between the union and the company, while still remaining within the intent of the Labour Standards Code. The rigid limits to daily and weekly hours should be removed to permit averaging over a two-week period.

The idea of the longer day and shorter week originated with the union, not the company. Trials have been under way since June 1972, and most of the employees approve highly. Some are on the 4-10-40 arrangement; others are on schedules

that are keyed to two-week periods such as three days of 12 hours each plus one day of 8 hours in the first week, followed by three 12-hour days in the second week - a total of 80 hours. There are several other patterns, weekly and bi-weekly.

These arrangements of hours are legally possible as long as there is no cancellation of the 13-week and 52-week averaging now being utilized. If some or all of this averaging were cancelled, the situation would be disastrous.

6. Bell Canada said that industry is seeking greater productive use of high-cost capital equipment; there is a groundswell of interest among the employees for more effective leisure hours; and the community is seeking better time-sharing and use of transportation, educational and recreational facilities. The Labour Code should recognize this and it should be amended to allow any variations of work hours that meet reasonable standards.

The parties to a bona fide collective agreement should be free, within certain prescribed legal limits, to agree on the distribution of hours in a day, in a week, or in a longer unit of time. The present requirements for averaging hours of work, namely, irregular distribution of employees' hours, should be widened to include regularly scheduled hours on other than a five-day week, in accordance with the terms of a collective agreement. Where there is no bargaining agent, the Minister may consider the wishes of the employees

involved and issue a permit authorizing such scheduling. Bell pressed for continued availability to 13-week averaging but admitted that 2-week averaging would cover the present experiments on the modified work week, some of which involve bi-weekly schedules.

7. The Canadian Railway Labour Association represents 17 trade union member organizations. Certain long-standing hours of work arrangements on the two national railway systems are in jeopardy because of the manner in which the 8-hour day, as a standard day, is defined in the Labour Code, namely, that time and one half must be paid after 8 hours daily. These difficulties relate principally to three member unions and their collective bargaining arrangements with the two railways.

Where small groups of workers, such as signal gangs or repair crews, are working at locations some considerable distance from the workers' homes, it has been customary to devise special hours of work schedules which enable the regular weekly hours to be worked in such a way that there is sufficient time off for the men to travel home and enjoy normal weekends. In some cases the time off is every second or third week, depending largely on the distance from home. The scheduled daily hours are at straight time. Weekly overtime is paid after 40 hours on weekly schedules and after 80 hours or 120 hours when the schedules are bi-weekly or tri-weekly. These arrangements have been used for 15 or more years.

The Association claims that these practices maintain the principle of the 40-hour week (or multiples of 40) in the same manner as averaging under the regulations.

The Association contends that the Code, if strictly enforced, would have a discriminatory effect on the railway industry and would place restrictions on collective bargaining that were not intended by law. The Association believes that the railways are using averaging to some extent to authorize these special hours arrangements, but it is not fully informed of all the facts in this connection. If averaging were used, the unions have doubts about its continuance since these special arrangements relate to regular hours of work, not irregular hours which are a prerequisite to averaging. The Association asked that necessary amendments be made in the legislation so that these arrangements may be approved by the Minister in special circumstances without changing the basis of the statute, namely, standard hours of 8 and 40 and maximum hours of 48 a week.

8. Canadian National Railways and Canadian Pacific Limited are concerned about certain hours of work arrangements which have been applied to specific groups of their employees for many years. These schedules of hours are in jeopardy because the Code requires payment of time and one half after 8 hours in a day.

The companies gave six examples to illustrate the problem. Certain gangs are required to work some distance from their homes. In some cases the daily hours are either more or less than 8 hours a day but total 40 hours in a week, and allow sufficient time for the men to return each week for a normal weekend at home. In other cases the schedule is geared to nine or nine and a half days work in succession to allow four and a half or more days off each two weeks. There is also a tri-weekly schedule when the men work twelve 10-hour days and have nine days off every three weeks. All scheduled hours are at regular rates of pay. These arrangements are made under collective bargaining. In some cases there are amendments or supplements to the agreements; in other cases there is nothing in writing. The 9- and 10-hour days have not created any problem of work injuries or accidents.

Time and one half overtime is paid after 40 hours on weekly schedules, after 80 hours on bi-weekly schedules, and after 120 hours on tri-weekly schedules, in the same way as specified under the regulations on averaging.

The railways said that if they had been able to secure approval for averaging hours of work under the Code, and were reasonably sure that averaging would not be questioned or withdrawn, then it would not be necessary to ask that the Code be amended to permit these practices to continue.

9. The Canadian Chamber of Commerce forwarded for consideration its approved policy on the modified work week. The Chamber observed that minimum standards (evidently legislative labour standards) could interfere with the collective bargaining process by inhibiting the parties from establishing benefits best suited for them, and therefore employees covered by a bona fide collective agreement should be exempt from the application of the Canada Labour (Standards) Code.

In respect to non-unionized employees, certain flexibilities should be available, such as averaging, but third-party supervision might be required to determine employees' views.

At this point the Commission wishes to say that this proposal to exempt from the Standards Code all employees who are under collective agreements with recognized unions was discussed by the House of Commons and Senate in 1964 and 1965 when the Code was under consideration. The decision was made then that the Code would apply to all employers and employees under federal jurisdiction, except certain management and professional personnel. However, the Code included a "Having more favourable benefits" provision which is now section 28(1).

No other party has made representations to this Commission that the collective bargaining sector should be exempt from the legislation; but most unions did ask that the Code should allow certain flexibile arrangements in hours of work which are agreed to by collective bargaining.

SUMMARY OF OTHER INFORMATION

1. A survey made by the Oil, Chemical and Atomic Workers Union of about 1,800 of its members showed a fairly strong preference among day workers for longer daily hours in order to have more days off, where total weekly hours remained the same. However, where the total hours averaged about 40 per week, all employees (day, 41 per cent; shift, 59 per cent) showed a better than two fifths preference for five 8's, about one third favoured four 10's, and one fifth, three 12's. On the proposal to reduce total hours of work, slightly more than half of all employees preferred fewer work days each week.

About 6 per cent of all employees had additional part-time work, and if they were given more time off from their regular jobs about 8 per cent would seek extra work. Moonlighting would increase slightly.

2. Several references were made to the probability that a longer working day would contribute to an increase of fatigue, errors, work injuries or accidents. A survey covering 18 manufacturing and 20 non-manufacturing industrial groups in Pennsylvania in 1968 and 1969 showed that work injuries generally are highest at the beginning of the day and decrease in slightly uneven progression throughout the 8-hour day.

Other findings from the Workmen's Compensation Board of British Columbia suggest that people are more prone to accidents on some days than on others, due to factors not directly related to the place of work.

The 1971 report of the National Institute of Industrial Psychology, London, England, showed that accidents in industrial workshops were highest in mid-morning; were high just before breaks; and tapered off near closing time. In summary, the rate of work injuries depends primarily upon the environment in which the employees work, and errors and injuries will likely increase in number in situations where daily hours are long and there are hazards of weather and power tools.

3. In the hours standard legislation in the provinces, there are few restraints on the use of a modified work week. In Québec,New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland, with one minor exception, there is no requirement to pay overtime on other than weekly hours, generally 48.

In British Columbia, Alberta, Saskatchewan and Manitoba the requirement is an overtime rate after 8 or 9 daily hours, but it is possible to have that provision waived by the competent authority, and necessary changes have been made in policy and in legislation to do that. Quite a few modified work week experiments are under way, generally on a mutual consent basis.

In Ontario the overtime rate is on a weekly basis, but permission is required to work in excess of 8 hours a day. The competent authorities have given permission for a modified work week in a number of situations, and in some cases for schedules of hours over two-week periods.

4. Most of the reported three to five thousand establishments in the United States that are using the modified work week for some or all of their employees have done so under state laws which generally do not require an overtime rate on a daily basis but only after a certain number of weekly hours. Enterprises operating under the Fair Labor Standards Act, which regulates interstate commerce, are in a similar position, namely, overtime is required only after weekly hours, not daily.

A public inquiry by the U.S. Department of Labor to deal with requests to waive the daily overtime rate for persons employed on federal government contracts for construction and supplies did not result in any change in the daily overtime provisions of the relevant contracts legislation. This legal requirement to pay time and one half after 8 hours a day inhibits the use of the modified work week in this area.

5. An international standard for hours of work was adopted in 1919 by the International Labour Office for most industrial undertakings. The hours were limited to 8 a day and 48 a week. This was set forth in Convention 1: Hours of Work (Industry). Canada, including the provinces and the Territories, is not yet in full compliance with this Convention. The Convention has been ratified by 33 member states of the ILO.

The Convention provided for certain flexibilities such as a 9-hour day at regular rates, averaging of hours of

work up to three weeks for shift workers, and averaging of hours of work of employees in exceptional circumstances where there is agreement between workers' and employers' organizations. Such averaging may be done over the number of weeks covered by such agreements.

Recommendation 116: Concerning Reduction of Hours of Work, was adopted by the ILO in June 1962. It provides for averaging of hours over a period longer than one week where special conditions or technical needs justify it. The competent authority in each country may fix the length of the period over which the hours of work may be averaged.

6. There have been some developments in the use of flexible working hours. In this arrangement there is a central core of hours during which the employee must be at work. Usually this is from 9.00 a.m. to 3.30 p.m. The employee can select his starting and stopping times each day, outside the core hours, provided he puts in a certain number of hours of work each day, not counting lunch break, or on an average over a period of a week, a month, or more.

In Canada such an experiment has been under way for about five months in the Personnel Branch of the Department of Consumer and Corporate Affairs. The employees are required to work 7½ hours each day and 37½ hours each week.

The one plan noted in New York State seems very similar to the plan in Canada.

The flexible hours plans in effect in Germany and Switzerland generally permit the daily hours to vary within limits, but the total must reach a stated average over a specific time period. The employee has some freedom to work some short days which will need to be balanced by longer days to maintain the necessary average.

CONCLUSIONS AND RECOMMENDATIONS

1. From the employees' standpoint, the chief reason they request the modified work week is the desire to have three-day and even four-day weekends. That is the principal lure. They are willing to work longer daily hours at regular rates of pay to attain it. In recent years about half of the general holidays have been observed on Mondays, and no doubt this has given employees a liking for a three-day break at the end of a week. There is also discernible a desire to participate to a greater extent than formerly in determining the time of day and the number of days in the week that the employee will work. Back of that is an urge to enjoy more leisure currently on a weekly basis without detracting from the valued benefits of general holidays, annual vacations or the ease and freedom of retirement.

The flexible working hours arrangements, described elsewhere in this report, provide even greater employee participation in determining the time of going to and returning from work each day, but they do not provide the longer weekend as does the modified work week.

In the larger urban centres the employees are anxious to avoid the frustration, delays and expense of travelling to and from work when buses are crammed with people and streets and highways filled with automobiles and other vehicles. When they are on the longer daily hours basis, that travelling is

usually done at a time when traffic congestion is less. There is also a saving of about one fifth of transportation costs by the four-day schedule replacing five days at work.

The experiments on hours have been tried and have generally been successful, at least to the extent that other employees wish to make the experiment.

2. On the basis of information given and opinions expressed at this Inquiry, the employers have responded to employee requests for modified work weeks; in only a few cases have they initiated the changes. After examining the suggested arrangements the employers were willing to go along with the proposals. First of all the change in hours showed some promise of contributing to a better climate of working conditions which, in turn, might be reflected in better employee morale, less turnover, and an improved basis of recruitment. In addition, it would likely lessen absenteeism and overtime. A more important reason is the utilization of expensive capital equipment for more hours per day, with less economic loss by reason of fewer start-ups and stops of processes and machines. One company studied the proposal, decided it would be uneconomic, and did not proceed with the plan after it had been agreed to by the company and union.

3. In all cases described during the Inquiry proceedings the parties operated on a mutual consent basis, usually for small, specialized groups of employees. Where the longer daily

hours were unsuitable for some employees, efforts were made to move them into areas in the establishment that were on the old pattern of hours of work.

4. Most of the hours of work experiments under way were in situations where averaging under section 29(2) and Regulations 4 and 5 is applied. However, in most cases the employees' hours are regular rather than irregular, which is a requisite to the use of averaging, and consequently there is apprehension that the withdrawal of averaging will cause considerable disappointment and even chaos for employer and employee alike.

5. Most of the modified work weeks being tried out are weekly only. But some arrangements involve periods of two weeks, such as three 12's in one week followed by three 12's and one 8 in the second week. Then there is the cycle in some parts of the airlines operation that is based on nine days, namely, six days' work and three days' rest, which is then repeated.

6. The two national railways have a special problem. They solved it by collective bargaining many years before the Code came into being, and in so doing they were merely following averaging standards that were proposed by an international labour convention adopted 53 years ago. The railways and the railway unions believe that these solutions are now in jeopardy.

The hours arrangements include situations involving one week, two weeks and three weeks. In that respect, some

of the schedules on hours and days lie outside the Terms of Reference of this Commission which refer to "an industrial establishment where the working hours of employees are arranged in such a way that they work fewer than five days in a week". However, the problem was referred to the Commission by the Minister of Labour and is being considered in this report. Similarly, the nine-day cycle, evidently a common arrangement in the airlines, lies outside the above terms.

7. Some of the railways' problems respecting gangs working considerable distances from home have been settled by a modified work week arrangement. Other situations were met by hours arrangements stretching over two weeks or three weeks. Averaging permits this, but permission to average may be denied or withheld.

8. A good case has been made for a change in the legislation to permit the modified work week, or modified hours schedules covering one, two or three weeks in those situations where the arrangements have been made by collective bargaining. Where no union exists, the employees should have the same right to experiment, on a mutually agreed basis, if the Minister is satisfied that there is free consent of the employees affected. There are precedents for this in the provinces and in the ILO instrument on hours standards.

9. There does not need to be any change in the standard hours of 8 a day and 40 a week and maximum hours of 48 a week in the Standards Code. The change necessary is in the conditions under which averaging can be used. The entry into averaging should be widened.

10. It is not clear whether one week can be considered an averaging period within the legislation in its present terms. Section 29(2) refers to "two or more weeks". Regulation 4(2) and (4) provides that if the averaging period selected by the employer is less than thirteen weeks, the standard hours are determined by multiplying the number of weeks so selected by 40, and the total of hours is the product obtained by multiplying the number of weeks selected by 48. Thus, if one week is the selected period, the standard hours are 40 and the total hours 48.

11. It is recommended that the necessary amendment be made to the legislation so that the Minister may permit the hours of work in a day and the hours of work in a week to be calculated for the employees within a class or group as an average for periods of one, two or three weeks, in a manner prescribed by regulation,

(1) Where the parties to a collective agreement have agreed on schedules of hours other than 8 hours per day for five days in the week for any class or group of employees, or

(2) Where no bargaining agent exists, the parties have agreed, to an extent acceptable to the Minister, upon a schedule of hours other than 8 hours per day for five days in the week for any class or group of employees.

APPENDIX I

SCHEDULE OF HEARINGS

Phase I

August 22	10.00 a.m.	Defence Construction (1951) Limited
22	2.00 p.m.	Air Canada
29	10.00 a.m.	Canadian Telephone Employees' Association
29	2.00 p.m.	Survair Ltd.
30	10.00 a.m.	Bell Canada
31	10.00 a.m.	Tne St. Lawrence Seaway Authority and Canadian Brotherhood of Railway, Transport and General Workers

Phase II

October 2	2.00 p.m.	Canadian Brotherhood of Railway, Transport and General Workers
5	9.30 a.m.	Air Canada and Canadian Pacific Air Lines
5	2.00 p.m.	General Aviation Services Ltd.
6	9.30 a.m.	Canadian Labour Congress
17	2.00 p.m.	Canadian Telephone Employees' Association
18	10.00 a.m.	Bell Canada
November 7	9.30 a.m.	Canadian Railway Labour Association
7	2.00 p.m.	Canadian National Railways and Canadian Pacific Limited

APPENDIX II

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